

**TOWN COUNCIL ACTION ITEM
STAFF SUMMARY
FEBRUARY 15, 2022 COUNCIL MEETING**

DATE: February 10, 2022

AGENDA ITEM NUMBER: 7

ACTION TO BE CONSIDERED: Consideration of Resolution No. 13-22, Series of 2022, approving an agreement for the assignment and assumption of a lease agreement for food and beverage concessions at the Dillon Marina.

TIME FRAME: Formal action is being requested on 2/15

SUMMARY: The owners of Pug Ryan's Brewery have requested Council consideration of allowing the Tiki Bar Lease be assigned to a new owner of Pug Ryan's Brewery.

The current lease extension (attached) includes the following provisions:

- No sublease or assignment without Town Council approval
- Expires 11/1/2026
- No option to renew after 11/1/2026

BUDGET IMPACT: TBD

MOTION FOR APPROVAL: "... move to approve Resolution No. 13-22, Series of 2022, approving an agreement for the assignment and assumption of a lease agreement for food and beverage concessions at the Dillon Marina."

ACTION REQUESTED: MOTION, SECOND AND ROLL CALL VOTE FOR APPROVAL

Resolutions require affirmative votes from majority of council members present

DEPARTMENT HEAD RESPONSIBLE: Nathan Johnson, Town Manager

RESOLUTION NO. 13-22
Series of 2022

**A RESOLUTION APPROVING AN AGREEMENT FOR THE
ASSIGNMENT AND ASSUMPTION OF A LEASE AGREEMENT
FOR FOOD AND BEVERAGE CONCESSIONS AT THE DILLON
MARINA.**

WHEREAS, the Town Council has reviewed the attached Assignment and Assumption Agreement, finds its terms appropriate, and desires to approve the same.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF DILLON, COLORADO, AS FOLLOWS:**

Section 1. The Assignment and Assumption Agreement (the “Agreement”) by and between Rolling Boil, LLC and Austrand Enterprises LLC, concerning food and beverage concessions at the Dillon Marina, is hereby approved and consented to in essentially the same form as accompanies this resolution.

Section 2. The Mayor is authorized to sign the Agreement to indicate the Town’s express written consent to the assignment and assumption, subject to the terms and conditions of the Agreement.

Section 3. As a condition of the Town’s express written consent, the Mayor is further authorized to negotiate and approve such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Agreement are not altered.

**APPROVED AND ADOPTED THIS 15TH DAY OF FEBRUARY, 2022 BY
THE TOWN COUNCIL OF THE TOWN OF DILLON, COLORADO.**

TOWN OF DILLON,
a Colorado municipal corporation

By: _____
Carolyn Skowyra, Mayor

ATTEST:

By: _____
Jo-Anne Tyson, MMC, Deputy Town Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Lease Agreement for Food and Beverage Concessions at the Dillon Marina)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 20____, by and between **ROLLING BOIL, LLC**, a Colorado limited liability company (“**Rolling Boil**” or “**Assignor**”) and **AUSTRAND ENTERPRISES LLC**, a Colorado limited liability company (“**Austrand**” or **Assignee**”).

WHEREAS, the Town and Bullwinkle’s Grill Company, Inc. (“**Bullwinkle’s**”) entered into that certain lease agreement on September 6, 2011, effective as of October 1, 2011, under which lease agreement Bullwinkle’s was permitted to occupy and use a portion of the Crow’s Nest and related property at the Dillon Marina for the sale of food and beverages to visitors of the Dillon Marina, in exchange for Bullwinkle’s payment of rent to the Town in the form of a certain percentage of gross revenues (“**Original Lease**”); and

WHEREAS, the Town and Bullwinkle’s entered into that certain First Amendment to the Original Lease on January 17, 2012, effective as of October 1, 2011, to clarify the leased premises and amend the parties’ respective rights and obligations regarding repair, maintenance, and storage (“**First Amendment**”); and

WHEREAS, the Town and Bullwinkle’s entered into a Second Amendment to the Original Lease on April 3, 2012, effective as of October 1, 2011 (“**Second Amendment**”); and

WHEREAS, the Town and Bullwinkle’s entered into a Third Amendment to the Original Lease on August 21, 2012, to remove the Crow’s Nest from, and to add certain specific areas of the Dillon Marina property to, the leased premises (“**Third Amendment**”); and

WHEREAS, the Town and Bullwinkle’s entered into that certain Fourth Amendment to the Original Lease on April 2, 2013, to amend Bullwinkle’s rent payment obligation (“**Fourth Amendment**”); and

WHEREAS, the Town and Bullwinkle’s entered into that certain Fifth Amendment to the Original Lease on July 16, 2013, to redefine and expand the leased premises (“**Fifth Amendment**”); and

WHEREAS, the Town and Bullwinkle’s entered into that certain Sixth Amendment to the Original Lease on May 3, 2016, effective as of November 1, 2016, to extend the term of the lease and amend provisions related to rent and renewal options (“**Sixth Amendment**”); and

WHEREAS, Bullwinkle’s and Rolling Boil entered into that certain Assignment, Assumption, and Consent Agreement on April 3, 2017, by which Bullwinkle’s assigned and delegated all of its rights and obligations in the Original Lease, as amended, to Rolling Boil; and

WHEREAS, the Town and Rolling Boil entered into that certain Town of Dillon Consent to Assignment Agreement on April 4, 2017, by which the Town consented to assignment of Bullwinkle's rights and obligations in the Original Lease, as amended, to Rolling Boil; and

WHEREAS, the Town and Rolling Boil entered into a Seventh Amendment to the Original Lease on April 18, 2017, to clarify Rolling Boil's renewal options ("**Seventh Amendment**"); and

WHEREAS, the Town and Rolling Boil entered into an Eighth Amendment to the Original Lease on August 18, 2020, to extend the term of the Lease Agreement (defined below) to November 1, 2026, and to eliminate Rolling Boil's option to unilaterally renew the Lease Agreement ("**Eighth Amendment**", and together with the Original Lease, as amended, the "**Lease Agreement**"); and

WHEREAS, pursuant to Section 26(A) of the Lease Agreement, Rolling Boil has requested the Town's express written consent to an assignment of all of Rolling Boil's rights and obligations under the Lease Agreement to Austrand; and

WHEREAS, Rolling Boil and Austrand desire to enter into this Agreement to set forth the terms of Rolling Boil's assignment and delegation, and Austrand's acceptance and assumption, of all of Rolling Boil's rights and obligations under the Lease Agreement; and

WHEREAS, it is the Town's intent that the Mayor's signature on this Agreement constitutes the Town's express written consent to the assignment and assumption, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the recitals, promises, covenants and undertakings herein set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the parties hereto agree as follows:

1. Assignor hereby assigns to Assignee, and Assignee hereby accepts and assumes from Assignor, all of the Assignor's rights, duties and obligations under the provisions of the Lease Agreement.

2. Nothing herein shall relieve Assignor of any obligations or liabilities accruing under the Lease Agreement prior to the effective date hereof.

3. The undersigned signatories represent and warrant that they have been duly authorized to execute this Lease Agreement and have full power and authority to bind the Assignor and Assignee to the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

ASSIGNOR:
ROLLING BOIL, LLC

ASSIGNEE:
AUSTRAND ENTERPRISES LLC

By:

By:

Print:

Print:

Title:

Title:

The Assignment and Assumption of the Lease Agreement is hereby approved and consented to by the Town of Dillon:

TOWN OF DILLON,

a Colorado home rule municipal corporation

By: _____
Carolyn Skowyra, Mayor

ATTEST:

Jo-Anne Tyson, MMC, Deputy Town Clerk